

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

FILED

IN RE: **ROBERT F. MOREHEAD**
Arkansas Bar ID #70050
CPC Docket No. 2008-037

MAR 02 2009

**LESLIE W. STEEN
CLERK**

HEARING FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Bernice Marks of Pine Bluff on February 26, 2008. The information related to the representation of Bernard Marks in 2006-2008 by Respondent Robert F. Morehead, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas. On May 13, 2008, Respondent was served with a formal complaint, supported by affidavits from Bernice Marks, Docie Johnson, Denise Parks, Floyd Pederson, Jr., and Diane Sledge. After a ballot vote, Mr. Morehead requested a public hearing before another panel. The hearing was conducted on February 20, 2009, before Panel B, consisting of members Valerie Kelly (Chair), Michael Cogbill, Barry Deacon, Stephen Crane, Carolyn Morris, and Robert Trammell, an attorney member of Panel C sitting in place of Henry Hodges, who recused. The Office of Professional Conduct was represented by Stark Ligon. Respondent Morehead was represented by Jeff Rosenzweig. Both parties agreed to try the case with a six member panel.

Robert F. Morehead represented Bernard Marks at trial in Jefferson Circuit CR-2004-0682-1. A Judgment & Commitment Order was filed January 26, 2006, sentencing Marks to life without parole for capital murder. Marks was informed by the Court of his right to appeal. On February 3, 2006, Morehead filed a Petition for Judgment Not Withstanding Verdict or New

Trial Pursuant to Rule 33.3.

On February 16, 2006, Bernice Marks, Bernard's mother, gave Morehead her husband Andrew's check #1293 for \$4,000.00, marked as being a \$900.00 deposit on the record and \$3,100.00 for fees. Morehead issued her corresponding office receipts #51540 and #51541 dated February 16, 2006, for the \$4,000.00. Mr. Morehead has admitted he had no attorney trust account at the time and thus he did not deposit these client funds into any trust account, as required by Rule 1.15. At least the \$900.00 deposit for the future transcript was required to be deposited into a trust account. Since he could not begin work on the appeal until he had a record from which to work, the \$3,100.00 fee was an advance payment for future legal services to be provided by Mr. Morehead to the client, and the \$3,100.00 should have been deposited into a trust account until earned. Mr. Morehead has admitted in writings that he later converted the \$4,000.00 to his personal and office use.

An Order Denying Motion for Judgment Notwithstanding Verdict and for New Trial, was filed February 21, 2006. Morehead filed a Notice of Appeal on February 22, 2006, stating he had made financial arrangements for the trial transcript. On February 27, 2006, he provided the \$900.00 transcript deposit to the court reporter, Docie Johnson, in the form of a cashier's check. On May 11, 2006, Morehead filed a Motion for Extension to Time To Lodge Transcript. On the same date an Order Extending Time for Preparation of Record was filed, granting Marks the full seven months permitted by rule to lodge the appellate record.

On August 16, 2006, Ms. Docie Johnson, the official court reporter for Division One, completed the Marks trial transcript and delivered it to the circuit clerk. On August 24, 2006, Morehead filed an Affidavit of Indigence & Request for Free Transcript for Marks. On the same

date, an Order was filed granting the motion to declare Marks a pauper ("IFP" status for the appeal) and a free, state-paid transcript. There is general language in the Affidavit to inform the Court that Morehead had received some deposit of funds (no amount stated) from the Marks family to get the transcript started, but no mention of the \$3,100.00 paid up front to Morehead for his fee on the appeal.

On August 25, 2006, Morehead tendered the Marks record to the Clerk of the Supreme Court of Arkansas for filing, but it was declined due to non-compliance with Appellate Rule 5 on his extension of time order. The record was returned to him by the Clerk's office on November 27, 2006. He was advised at the time to file a motion for rule on the clerk. Mr. Morehead has filed no such motion. Bernard Marks' appeal languished in his counsel's hands after late August 2006.

By her check #8608 dated August 25, 2006, Ms. Johnson refunded Morehead the full \$900 transcript deposit he had earlier paid her. Ms. Johnson was paid the full cost of the transcript, \$2,217.70, on September 12, 2006, by the State of Arkansas, pursuant to the Order filed August 24, 2006. The \$900 refund was neither deposited into Mr. Morehead's trust account nor refunded to the Marks.

Not having heard anything from his counsel on the status of his appeal, Bernard Marks wrote the Supreme Court's Criminal Justice Coordinator, Sue Newbery, asking about his appeal. On February 8, 2008, she wrote, informing him that the appeal record in his case had not been filed with the Court.

In March 2008, Mr. Marks' parents hired and paid new counsel, Greg Robinson of Pine Bluff, to attempt to obtain a belated appeal for Bernard. Appellate Rule (Criminal) 2(e) requires

that no motion for belated appeal shall be entertained by the Supreme Court unless application for such is made within eighteen (18) months of the date of entry of the judgment or entry of the order denying post-conviction relief from which the appeal is taken. The later of these two “trigger” dates in Marks’ case may be February 21, 2006, well over two years ago.

Mr. Morehead was contacted by the Office of Professional Conduct about the Marks matter by letter on April 3, 2008. On April 16, 2008, Mr. Morehead filed a Motion for Rule on the Clerk for Bernard Marks, where the case is now docketed as No. CR08-472. The Motion contains no indication that Mr. Morehead communicated he was about to take this action to either his client or his parents, or that Mr. Morehead knew at the time he filed this Motion that they had retained the services of new counsel in this matter. The Motion was granted, Mr. Morehead was later relieved as Marks’ counsel, and Mr. Robinson has now taken over the case and filed a brief for Marks. Marks’ conviction and sentence were affirmed by the Court’s Opinion issued December 19, 2008, in No. CR08-472.

Mr. Morehead failed to pay his 2008 Arkansas law license fee, due by March 1, 2008, and it remained unpaid as of May 8, 2008. Therefore, his filing the Motion in the Marks matter on April 16, 2008, constituted practicing law while his law license was administratively suspended.

At the hearing Mr. Morehead asserted that medical and health problems he had encountered in 2007-2008 had at times temporarily limited his ability to handle his legal business. He stipulated that he had not had an attorney trust account from at least January 1, 2006, until he opened a new one on February 18, 2009. He stated he was not aware of a change in interpretation of Rule 5 that was implemented by the Supreme Court in Spring of 2006 to a strict interpretation of the Rule’s requirements for obtaining an extension of time to lodge the appellate

record with the Supreme Court Clerk. He stated he had mailed a \$4,000 restitution check to Mr. Andrew Marks earlier in the week of the hearing.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, hearing testimony and exhibits, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. By a unanimous vote that Robert F. Morehead's conduct violated Rule 1.2(a), as alleged in Section A.1 of the Complaint, in that Bernard Marks desired an appeal from his life without parole sentence, and by failing to either file his appellate record or timely file a motion for rule on the clerk to get it filed, Mr. Morehead has thwarted his effort to obtain an appeal. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

2. By a unanimous vote that Robert F. Morehead's conduct violated Rule 1.3, , as alleged in Section B.1 of the Complaint, in that the Supreme Court Clerk's office notified him on November 27, 2006, that he needed to file a motion for rule on the clerk to be able to pursue Bernard Marks' criminal appeal, yet Mr. Morehead failed to file any motion for him until April 16, 2008, an unreasonable delay. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

3. By a tie vote of 3-3, with Kelly, Cogbill and Trammell voting yes and Deacon, Crane, and Morris voting no, the Panel finds no violation of Rule 1.4(a)(3), as alleged in Section C.1 of

the Complaint.

4. By a unanimous vote, the panel finds no violation of Rule 1.4(a)(4), as alleged in Section D.1 of the Complaint.

5. By a unanimous vote, the panel finds no violation of Rule 1.4(b), as alleged in Section E.1 of the Complaint.

6. By a unanimous vote, the panel finds Robert F. Morehead's conduct violated Rule 1.4(c), as alleged in Section F.1 of the Complaint, in that after receiving a \$900.00 refund of client funds from the court reporter in late August 2006, funds expressly paid to him by the client for the purpose of making a deposit on the client's trial transcript, Mr. Morehead failed to notify his clients of his receipt of these funds to which the client was entitled. Arkansas Rule 1.4(c) provides that a lawyer shall promptly notify a client in writing of the actual or constructive receipt by the attorney of a check or other payment received from an insurance company, opposing party, or from any other source which constitutes the payment of a settlement, judgment, or other monies to which the client is entitled.

7. By a unanimous vote, the panel finds no violation of Rule 1.5(a), as alleged in Section G.1 of the Complaint.

8. By a vote of 4-2, with Kelly, Deacon, Crane and Trammell voting no and Cogbill and Morris voting yes, the panel finds no violation of Rule 1.15(a)(1), as alleged in Section H.1 of the Complaint.

9. By a vote of 5-1, with Kelly, Deacon, Crane, Morris and Trammell voting no and Cogbill voting yes, the panel finds no violation of Rule 1.15(a)(1), as alleged in Section H.2 of the Complaint.

10. By a vote of 5-1, with Kelly, Cogbill, Deacon, Morris and Trammell voting yes and Crane voting no, the panel finds Robert F. Morehead's conduct violated Rule 1.15(a)(1), as alleged in Section H.3 of the Complaint, in that on August 25, 2006, court reporter Docie Johnson refunded to Mr. Morehead the \$900.00 deposit on the Marks transcript he had given her in February 2006, and he failed to either place these client expense funds in a trust account or to promptly refund them to the client. Arkansas Rule 1.15(a)(1) requires that a lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

11. By a unanimous vote, the panel finds Robert F. Morehead's conduct violated Rule 1.15(b)(1), as alleged in Section I.1 of the Complaint, in that he admits in writing he had no attorney trust account, as required by this Rule, from February 2006 through February 2008, a period when he received funds belonging to his client. Arkansas Rule 1.15(b)(1) funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

12. By a unanimous vote, the panel finds no violation of Rule 3.3(a), as alleged in Section J.1 of the Complaint.

13. By a tie vote of 3-3, with Kelly, Cogbill and Crane voting yes and Deacon, Morris and Trammell voting no, the Panel finds no violation of Rule 3.4(c), as alleged in Section K.1 of the Complaint.

14. By a unanimous vote, the panel finds Robert F. Morehead's conduct violated Rule 5.5(a), as alleged in Section L.1 of the Complaint, in that he failed to pay his 2008 Arkansas Bar

license fee by March 1, 2008, as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar, resulting in the automatic suspension of his Arkansas law license thereafter. He practiced law, including on Bernard Marks' matter, while his law license was suspended during this period. Arkansas Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

15. By a unanimous vote, the panel finds no violation of Rule 8.4(b), as alleged in Section M.1 of the Complaint.

16. By a unanimous vote, the panel finds no violation of Rule 8.4(b), as alleged in Section M.2 of the Complaint.

17. By a vote of 4-2, with Deacon, Crane, Morris and Trammell voting no and Kelly and Cogbill voting yes, the panel finds no violation of Rule 8.4(c), as alleged in Section N.1 of the Complaint.

18. By a vote of 4-2, with Deacon, Crane, Morris and Trammell voting no and Kelly and Cogbill voting yes, the panel finds no violation of Rule 8.4(c), as alleged in Section N.2 of the Complaint.

19. By a vote of 4-2, with Deacon, Crane, Morris and Trammell voting no and Kelly and Cogbill voting yes, the panel finds no violation of Rule 8.4(c), as alleged in Section N.3 of the Complaint.

20. By a vote of 4-2, with Deacon, Crane, Morris and Trammell voting no and Kelly and Cogbill voting yes, the panel finds no violation of Rule 8.4(c), as alleged in Section N.4 of the Complaint.

21. The panel unanimously finds no violation of Rule 8.4(d) as alleged in Section O.1 of the Complaint.

22. By a vote of 4-2, with Kelly, Cogbill, Morris and Trammell voting yes and Crane and Deacon voting no, the panel finds Robert F. Morehead's conduct violated Rule 8.4(d), as alleged in Section O.2 of the Complaint, in that by accepting and retaining the \$900.00 refund from the court reporter and not accounting to the court or the State of Arkansas for these funds, Mr. Morehead caused the State to pay \$900.00 more for the Marks transcript that the State was obligated to pay under the circumstances where private counsel is involved in a criminal appeal with the client later declared indigent. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

23. In considering the sanction to be imposed, members Deacon, Crane, Trammell, and Morris voted for a reprimand. Members Kelly and Cogbill voted for a three (3) month suspension.

24. All panel members voted for restitution of \$4,000.00.

25. All panel members voted to impose supervised probation for twenty-four (24) months on Mr. Morehead, subject to certain terms and conditions that are to be included in separate agreements for the probation and the supervising attorney. Mr. Morehead and his counsel were informed of the proposed terms and conditions and Mr. Morehead consented to them on the hearing record.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **ROBERT F. MOREHEAD**, Arkansas Bar ID# 70050, be, and hereby is, **REPRIMANDED** for his conduct in this matter,

ordered to pay \$4,000.00 restitution for the benefit of Andrew and Bernice Marks, is assessed \$300.00 committee case costs, and is placed on supervised probation for a period of twenty-four (24) months. Since the hearing, Mrs Marks has confirmed the receipt of a \$4,000.00 cashier's check from Mr. Morehead. The \$300.00 in costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The supervised probation period shall commence upon the signing by Respondent, his counsel, and the supervising attorney of the two agreements and the filing of the signed agreements with the Office of Professional Conduct.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie L. Kelly
Valerie L. Kelly, Chair, Panel B

Date: March 2, 2009